

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYLVESTER MAHONE,

Plaintiff,

V.

DOUG WADDINGTON, et al.,

Defendants.

Case No. C04-5463RJB

**ORDER AFFIRMING
JUDGE ARNOLD'S
ORDER**

This matter comes before the Court on Plaintiff's Objections to Magistrate Judge's Order (Dkt. No. 91). Dkt. 94. The Court has considered the relevant documents and the remainder of the file herein.

I. FACTS AND PROCEDURAL BACKGROUND

Plaintiff began this civil rights action on August 5, 2004. Dkt 1. On May 18, 2005, U.S. Magistrate Judge J. Kelley Arnold denied Plaintiff's motion to file an over length brief (48 pages) in response to Defendants Motion for Summary Judgment. Dkt. 91. The Motion for Summary Judgment was then stayed until June 24, 2005 to give Plaintiff an opportunity to file a Response within the page limits set by Local Rule 7(e)(3). Plaintiff objects to this ruling noting that his pleadings are handwritten and that he needs more space to draft his response. Dkt. 94. Judge Arnold also denied Plaintiff's motion for appointment of counsel as premature because it relies on Plaintiff prevailing on Summary Judgment. Dkt. 91, at 2. Plaintiff appeals this portion of the order, arguing the motion should at least be delayed until the decision regarding the Motion for Summary Judgment. Dkt. 94.

1 **II. DISCUSSION**

2 Under Fed.R.Civ.P. 72(a), upon objection by a party to a pretrial order of a magistrate judge, the
3 district judge shall consider the objections and shall modify or set aside any portion of the magistrate
4 judge's order found to be clearly erroneous or contrary to law.

5 Plaintiff has failed to establish that Judge Arnold's order denying his motions for leave to file an
6 over length brief and for appointment of counsel was clearly erroneous or contrary to law. Judge Arnold's
7 order denying Plaintiff's motions for leave to file an over length brief and for appointment of counsel (Dkt.
8 91) should be affirmed.

9 Moreover, Plaintiff's motion to this Court for appointment of counsel is without merit. Pursuant to
10 Rule 72(a) "[a] magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party
11 is referred to hear and determine shall promptly conduct such proceedings as are required and when
12 appropriate enter into the record a written order setting forth the disposition of the matter." Plaintiff's
13 motion for appointment of counsel is properly handled by the magistrate judge. Plaintiff's motion for
14 appointment of counsel should be denied.

15 Therefore, it is hereby

16 **ORDERED** that Plaintiff's Objections to Magistrate's Order Dkt. No. 91 (Dkt. 94) is
17 **OVERRULED**, and the May 18, 2005, order denying Plaintiff's motions (Dkt. 91) is **AFFIRMED**.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
19 party appearing *pro se* at said party's last known address.

20 DATED this 9th day of June, 2005.

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23 Robert J. Bryan
24 U.S. District Judge
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